

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0253

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 151509). The employer filed a timely request for hearing. On February 15, 2019, ALJ R. Frank conducted a hearing, and on February 22, 2019 issued Order No. 19-UI-125164, concluding claimant voluntarily left work without good cause. On March 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument therefore was not considered when reaching this decision.

FINDINGS OF FACT: (1) Peacehealth employed claimant as a nursing assistant in Eugene, Oregon from August 2017 to September 5, 2018.

(2) Claimant's net pay was approximately \$1,600 per month. He lived with his parents. His monthly expenses while living with his parents included \$600 rent, a \$300 auto loan, \$150 car insurance, \$16 student loan, and a \$200 credit card payment. He had approximately \$334 left each month after paying his bills.

(3) In or before August 2018, claimant's parents accepted a severance from their jobs and decided to move to Texas to attend nursing school. Claimant considered staying in the Eugene area and continuing to work for the employer. He researched his options. Claimant could not find a roommate. He had difficulty finding a rental residence he could afford.

(4) The lowest priced rental claimant identified was \$800 per month. His other monthly expenses included a \$300 auto loan, \$150 car insurance, and a \$16 student loan payment. The lowest monthly payment he could make on his credit card was \$35. With net earnings of \$1,600, claimant would have had \$299 per month left after paying those bills.

(5) As of February 2019, the USDA's "thrifty plan" for estimated grocery costs for a single male aged 19-50 was \$186.70 per month. \$299 minus \$186.70 would leave claimant with \$112.30 per month for other expenses such as utilities.¹

(6) The cost of utilities for a residence in Eugene, Oregon is approximately \$105.53. \$112.30 minus \$105.52 would leave claimant with approximately \$6.77 per month to pay for gas for his vehicle, a phone, toiletries, and any other incidental expenses.² The cost of paying for a month's supply of gas, toiletries, and other incidental expenses, and any monthly phone bill, would each exceed \$6.77 per month.

(7) Claimant generally worked 32 hours per week for the employer. The employer sometimes allowed employees to pick up extra shifts. Although claimant understood that picking up extra shifts could boost his income and help pay his expenses if he remained in Eugene on his own, in claimant's experience the employer had the discretion to send claimant home at any time during the extra shifts. Picking up extra shifts did not guarantee that claimant would receive a 40 full hours of work every week or have a reliable source of income to pay the increased costs associated with continuing to live in Eugene on his own after his parents moved.

(8) Claimant concluded that he would be unable to afford to remain in Eugene working for the employer after his parents moved to Texas. Claimant decided to move to Texas with his parents. He intended to find a job and explore the possibility of attending nursing school at some point in the future.

(9) In mid-August 2018, claimant notified the employer that he planned to quit work effective September 5, 2018. On September 5, 2018, claimant quit work. Less than two weeks later, on September 17, 2018, claimant and his parents had packed their residence and moved to Texas. At all relevant times, claimant was not enrolled in school.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). The standard is objective. *McDowell v. Employment*

¹ The ALJ did not ask claimant about the costs of his groceries and other expenses. Rather than remanding this case for additional evidence, we take notice of this generally cognizable fact, which is available at <https://www.cnpp.usda.gov/sites/default/files/CostofFoodFeb2019.pdf>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² The ALJ did not ask claimant about the costs of his utilities and other expenses. Rather than remanding this case for additional evidence, we take notice of this generally cognizable fact, which is available at smartasset.com. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

Department, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

The order under review concluded that claimant voluntarily left work without good cause because his “situation was [not] one of gravity.” Order No. 19-UI-125164 at 3. The order stated that claimant “could have easily made up” the difference between his expenses while living with his parents and the \$200 increase in rent he would have to pay living alone by asking the employer to increase his hours, “a request that the employer would have granted.” *Id.* The order also stated that claimant also “had the reasonable alternative of working for an additional period until actually moving to Texas with his parents,” and that a reasonable and prudent person of ordinary common sense would have considered those alternatives to quitting when claimant did. The record does not support those conclusions.

The costs associated with claimant living alone in Eugene did not merely amount to \$200 as stated in the order under review. In addition to the \$200 per month increase in claimant’s rent payment, claimant would, as a matter of common sense, also have sole responsibility for paying utilities and buying his own food, gas, and toiletries, and paying other myriad costs associated with living on one’s own. Claimant’s earnings from working for the employer at the time he quit work fell significantly short of covering the increased expenses as reasonably estimated herein. Although claimant could have asked the employer to increase his hours, and the employer might readily have agreed to do so, in claimant’s experience working extra shifts was not a reliable source of income. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not conclude that an unreliable source of income would make it feasible for him to meet basic living costs that exceeded his monthly net income. Remaining in Eugene on his own and asking for extra hours, under those circumstances, were not reasonable alternatives for claimant to quitting his job when he did.

Likewise, claimant did not have the reasonable alternative of continuing to work until he moved to Texas. Claimant quit his job only 12 days prior to moving. On this record, 12 days was not an unreasonable period of time for him to pack his entire residence in preparation for a permanent move out of state. The record is devoid of evidence that claimant quit when he did, for instance, to take a vacation from working prior to moving or because he simply did not want to work any longer, or that he quit when he did for any reason other than to pack and move. The record fails to show that claimant did not act as a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, when he worked up until less than two weeks prior to his move. Continuing to work for an additional period of time was, therefore, not a reasonable alternative to quitting when he did.

Claimant voluntarily left work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-125164 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: April 11, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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